

December 2, 2016

RIN 1210-AB63; Annual Reporting and Disclosure

Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5655
Washington, D.C. 20210

Submitted Electronically via Regulations.gov

Re: RIN 1210-AB63; Annual Reporting and Disclosure
Notice of Proposed Rulemaking, 81 Fed. Reg. 47496 (Jul. 21, 2016)
Notice of Proposed Rulemaking, 81 Fed. Reg. 47534 (Jul. 21, 2016)

Dear Assistant Secretary Borzi:

I am writing on behalf of Delta Dental Plans Association (Delta Dental) in response to the Department of Labor (DOL) Notices of Proposed Rulemaking entitled “Annual Reporting and Disclosure” (81 Fed. Reg. 47496) (NPRM) and “Proposed Revision of Annual Information Return/Reports” (81 Fed. Reg. 47534) (NPFR) (Collectively NPRMs), both published in the Federal Register on July 21, 2016.

Delta Dental is the nation’s largest, most experienced dental benefits system. Since 1954, Delta Dental has worked tirelessly to improve oral health in the U.S. by emphasizing preventive care and making quality, cost-effective dental health service plans available to a broad and diverse group of enrollees. Delta Dental provides a nationwide system of dental health service plans, comprised of custom programs and reporting systems that provide individuals, employees, and state Medicaid and Children’s Health Insurance Plan (CHIP) participants with quality, cost-effective dental benefit programs and services. Our nationwide network of 39 companies and 155,000 dentists serves more than 73 million Americans. Of these, we have 34.1 million enrollees in 8587 Administrative Service Only (ASO) commercial and public sector groups and 15.4 million enrollees in our ASO public entitlement business (e.g., Medicaid, CHIP, etc.). In this arrangement, a Delta Dental member company administers a plan which is funded and designed by the plan sponsor.

Summary of NPRMs: The Form 5500 Series is part of ERISA’s overall reporting and disclosure framework which allows regulators access to information and data needed to oversee employee benefit plans. The DOL’s NPRMs represent some of the most significant changes to the Form 5500 in decades. The NPRMs’ changes include expressly interpreting “group health plans” to include excepted benefit plans, expanding the reach of Form 5500 to cover private employer-sponsored group health plans with fewer than 100 participants, the extensive revision of Schedule C, and the new expansive “Schedule J” reporting requirements.

Overarching Comment: Delta Dental has significant concerns with the far-reaching scope of the NPRMs' data collection proposal for group health plans and the excessive burden it will impose on Stand-Alone Dental Plans (SADPs) and their small group market consumers. Further, SADPs which have limited access to much of the information sought in the new Schedule J due to their narrow scope and traditional excepted benefit status. Indeed, the rigid structure reflected in the NPRMs provides little flexibility to distinguish between the broad reporting requirements which may be well-suited for the occasional large group health plan, and the more focused reporting requirements that are appropriate for smaller, limited benefit plans. Further, the DOL has not yet fully calculated the cost of complying with the NPRMs' reporting requirements, which will weigh heavily on group health plans and small employers, and will result in disproportionately high costs for SADPs. For these reasons, Delta Dental suggests the DOL withdraw the NPRMs and consider existing avenues to collect information from group health plans.

Small Group Exception: The proposed "Annual Reporting and Disclosure" eliminates the small group exception and requires that all ERISA-covered plans that provide group health benefits file a Form 5500 in addition to the reporting requirements noted below. 81 Fed. Reg. 47496, 512. This is a first-time requirement and a significant break from past policy, under which small groups were exempted, and for good reason.

Delta Dental Comment: The expansion of Form 5500 into the small group market is onerous for employers and SADPs alike. As discussed in the next section, the reporting requirements in Schedule J are quite taxing and would require major upfront costs on behalf of plan sponsors. Much of this task will fall on ASO plans, which constitute a significant proportion of the plans offered by the Delta Dental member companies. DOL estimates these costs will be fairly low, based on its suggestion that most new filers in the small group market would purchase fully-insured products. Delta Dental's experience, however, shows otherwise, since our member companies have ASO arrangements with a significant number of employer sponsored plans in the small group market. As is currently the case for ASO business, self-funded plans will rely on Delta Dental member companies to collect the required information. This will require new systems uniquely tailored to the NPRMs' reporting requirements. These aspects were not fully considered in DOL's analysis, and would significantly increase the cost to administer self-funded plans.

Delta Dental Recommendation: Delta Dental recommends that DOL not expand the Form 5500 reporting requirements to group health plans with fewer than 100 participants. Instead, we recommend DOL conduct a revised analysis that accounts for the costs to be borne by employers and other stakeholders, and consider other more cost-effective ways to obtain the relevant information.

Schedules J & C: DOL proposes a new Schedule J which seeks a significant amount of information that was not required previously. Small groups are limited to the first eight questions, which seek information about the number of persons covered, those eligible for coverage, type of benefits available, funding and benefit arrangements for the plan, characteristics that apply to the plan, COBRA information, rebates or reimbursements from service providers, and any premium delinquencies by the plan sponsor. Questions for large employers are broader, and include: premiums paid for stop loss; information on employer contributions; detailed claims payment data; information on compliance with Summary Plan Description, Summary of Material Modification and Summary of Benefits and Coverage (SBCs) requirements; compliance with a myriad of federal laws, DOL regulations and Affordable Care Act (ACA) requirements; and, if the plan is insured, information about premium delinquencies.

Delta Dental Comment: As noted above, many employers choose to contract their dental coverage separately from their medical coverage, and the National Association of Dental Plans (NADP) research reflects that 98 percent of Americans choose to purchase their dental coverage separately from their medical coverage. Despite this, DOL proposes a single approach, i.e., Schedule J for all plan sponsors of group health plans to report information about their plans. This is impractical because, in most cases, the plan sponsors rely on plan administrators for plan information. When medical and dental are separately contracted this will likely create confusion, particularly since the regulations for medical and dental are different. And, although small groups need only respond to the first eight questions on Schedule J, those questions are overly broad. For instance, why should rebate information be required of SADPs, when SADPs are not required to pay medical loss ratio rebates? Similarly, many of the questions are irrelevant to SADPs due to their excepted benefit status. For instance, SADPs are excepted from the Genetic Information Non-Discrimination Act, Mental Health Parity Addiction and Equity Act, and Newborns' and Mothers' Health Protection Act, to name a few, because they are not applicable to dental and the answers to questions on these topics hold no value for consumers in the context of dental coverage. In addition, the proposed new Schedule J fails to provide any detailed instructions to SADPs, leaving issuers and plan sponsors without clear direction on how to respond, and the same is true for the questions about SBCs. In fact, many terms lack clear definitions. For instance, how does DOL define the term "delinquency" and when will comments be allowed on this definition? Without clear definitions of the operable terms, issuers cannot build the systems necessary to collect the information.

Delta Dental Recommendation: Delta Dental recommends that the DOL delay the implementation of Schedules J & C until appropriate instructions can be developed for employer-sponsored SADPs, whether these are ASO or fully-insured arrangements. Delta Dental also recommends DOL either (a) exempt groups from completing the checklist in the context of SADPs, or (b) create a separate checklist specifically for SADPs.

Excepted Benefit Status: The NPRMs explicitly propose that all "group health plans" that meet the definition in 733(a) of the Act would be required to file a Form 5500 and applicable schedules, including the proposed Schedule J, even when such plans are exempt from certain market reform requirements under ERISA § 732(a) (exemption for certain small group health plans that have less than two participants who are current employees) or ERISA § 733(c) (group health plans consisting solely of excepted benefits). See e.g. 81 Fed. Reg. 47498, n. 5.

Delta Dental Comment: Despite the language that includes SADPs within the definition of "group health plans," nearly half of the reporting requirements of the proposed Schedule J focus on ACA requirements from which SADPs are exempt. We propose that it does not make sense to require SADPs to report information relating to ACA requirements from which they are exempt.

Delta Dental Recommendation: Delta Dental recommends that DOL revise the NPRMs to clearly exclude excepted benefits and product-specific plans from Form 5500 reporting requirements.

Less Costly Alternative: As discussed above, we are concerned with the cost to group health plans and issuers of the proposed changes to Form 5500.

Delta Dental Comment: We support greater transparency with respect to employee benefits and, as the nation's largest dental benefits provider, we are uniquely qualified to provide assistance in developing an appropriate method to collect critical information about group health plans, without overburdening plan sponsors or issuers.

Delta Dental Recommendation: Delta Dental recommends DOL work with us, the National Association of Insurance Commissioners (NAIC) and other organizations to develop a more cost-effective method to collect the information needed by the agency to oversee group health plans.

Thank you for the opportunity to respond to the NPRMs. We are available to provide additional information, in writing or through discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Daughn', written in a cursive style.

Jason Daughn
Vice President, Government Relations